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Supreme Court, U.S.
FILED

Docket No. 95148 9 DEC 26 1995

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

MARK DEAN GODDARD,
Petitioner,

vs.

KANSAS DIRECTOR OF TAXATION
ON ASSESSMENT OF MARIJUANA
AND CONTROLLED SUBSTANCES TAX,
Respondent.

ON PETITION FOR CERTIORARI
TO THE
SUPREME COURT OF THE STATE OF KANSAS

John P. Gerstle II - KS #07793
Counsel of Record
Richard W. Parker - KS #10470
7600 W. 110th St., Ste. 104
Overland Park, KS 66210
TEL: (913) 451-1980
FAX: (913) 451-7523

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QUESTION PRESENTED FOR REVIEW

Is it a denial of due process and/or a denial of equal protection of the laws for the Kansas Supreme Court in its rules, specifically Rule (b), to require that a citizen from the State of Kansas and of the United States of America pay a statutory bond equal to 125% of the amount of a tax assessed by the State of Kansas Department of Revenue before the Appellate courts of the State of Kansas may hear a constitutional issue regarding the statute itself which imposes the tax when the administrative levels of the Kansas State Department of Revenue do not have authority to hear constitutional questions?

All the parties to the proceeding in the Supreme Court of Kansas whose judgment is sought to be reviewed is as follows:

Carla Stovall
Attorney General
State of Kansas
Kansas Judicial Center
301 W. 10th Avenue
Topeka, Kansas 66612

Carl Edwards, Attorney
Board of Tax Appeals
Docking State Office Building
915 S. W. Harrison
4th Floor
Topeka, Kansas 66612

Mr. Jack Shriver, Chairman
Board of Tax Appeals
915 S.W. Harrison
4th Floor
Topeka, Kansas 66612

Director of Taxation
Docking State Office Building
915 S. W. Harrison
3rd Floor
Topeka, Kansas 66612

Brian Cox, Attorney
Legal Services Bureau
Kansas Dept. of Revenue
Docking State Office Bldg.
915 S. W. Harrison
Topeka, Kansas 66612

Mark Burghart,
General Counsel
Department of Revenue
Docking State Office Building
915 S. W. Harrison
Topeka, Kansas 66612

REASON FOR REVIEW

The bond requirement to review a constitutional question while lower levels have no authority to review a constitutional question while the burden of proof at all times is on the citizen and the State is presumed to be correct by statute imposes a insurmountable issue in that the citizen is denied due process in that no opportunity to be heard is allowed without the necessary financial resources.

STATEMENT FOR BASIS OF JURISDICTION IN THE SUPREME COURT OF THE UNITED STATES

i. Judgment was entered by the Supreme Court on September 26, 1995.

ii. 28 U.S.C. Section 2105 confers jurisdiction upon the United States Supreme Court to review on a certiorari of the judgment of the Kansas Supreme Court herein.

iii. Notifications required by Rule 29.4 (c) have been made as the constitutionality of Kansas Supreme Court rule and the underlying statute of the Marijuana and Drug Tax Act has been drawn into question by serving a copy of this petition for certiorari upon the Attorney General of the State of Kansas.

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

Fourteenth Amendment

> Amendment Fourteen in the United States Constitution, Section 1. Citizenship; Privileges or immunity; due process clause. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor denied any person within its jurisdiction equal protection of the laws.

STATEMENT OF THE CASE

On March 21, 1988, Mark Dean Goddard and Robert Lee Foster pled nolo contendere to the charges of attempted possession of cocaine and sale of cocaine. On July 15, 1988, the

Kansas Department of Revenue issued a Notice of Assessment of tax upon marijuana and controlled substance to Robert Foster in the total of amount of $1,144,460.00. A like notice of assessment in an identical amount was issued by the Department of Revenue on September 29, 1988 to Mark Goddard. On April 23, 1992, a formal hearing was held by the Department of Revenue. On September 15, 1992, the Administrative Hearing Officer entered an order denying the appeal of the taxpayers, upholding the assessment of the department. (It was at this juncture that the constitutionality of the underlying state statue was first challenged.) On October 12, 1992, the tax payers filed a Notice of Appeal to the Board of Tax Appeals. On June 1, 1994, a formal hearing was conducted before the Board of Tax Appeals. On January 30, 1995, the Board of Tax Appeals entered an order affirming assessment of the tax by the department of Revenue. (The Board of Tax Appeals specifically denoted in its order that it was without authority to render decision on constitutional questions). On February 20, 1995, the tax payers filed a Petition for Reconsideration, which was denied by the Board of Tax Appeals. On April 7, 1995, the tax payers filed their Notice of Appeal, Petition for Judicial Review in the Court of Appeals. At that time, the tax payers filed their motion to waive the statutory bond. The Kansas Court of Appeals on May 5, 1995, denied its Motion to Waive Bond and ordered the parties to brief the issue.

Tax payers then petitioned the Kansas Supreme Court to review the Court of Appeal's decision regarding the waiver of bond. The Kansas Supreme Court by order dated September 26, 1995, denied the tax payers' petition for review.

The due process of law and equal protection constitutional questions were raised at every step of the appellate process from the initial appeal within the State of Kansas Department of Revenue through the petition to the Supreme Court of the State of Kansas. The issues were raised in writing in the briefs to each of the entities ruling upon the question.

ARGUMENT

The tax payers' argument for granting of a petition of certiorari for review of the ruling of the Kansas Supreme Court is basically quite simple. It is a denial of due process and of equal protection of the laws to require the taxpayers to post a bond in the amount of 125% of the tax assessed when they are challenging the constitutionality of the statute which assesses the tax and at the same time, the statute they are challenging presumes the tax to be accurate and places the burden of proof upon the tax payers to show the tax inaccurate. See, KSA 79-5205 (c). In other words, the tax payers are presumed wrong until they can prove themselves correct. However, no judicial authority can review the statute until such time as they have posted a bond in the amount of 125% of the tax. In this particular case, the tax is $1,144,460.00. To post a bond of 125% of that amount would, for most citizens of these United States, be impossible. Therefore, Kansas Supreme Court Rule 9.03 requiring the posting of the bond in the amount of 125% is a denial of due process and is a denial of equal protection of the laws.

Respectfully submitted:

John P. Gerstle II
KS #07793
7600 W. 110th St., Ste. 104
Overland Park, KS 66210
TEL: (913) 451-1980
FAX: (913) 451-7523